

REMARKS

1. In this response to the Office Action mailed January 13, 2009, Applicants respectfully request reconsideration. Claims 39-69 and 74-77 were last presented in the application. In the outstanding Office Action, claims 39-69 have been rejected and claims 74-77 have been objected to. By the foregoing Amendments, claims 39 and 55 have been amended and claims 78-91 have been added. Claims 74-77 have been cancelled. Thus, upon entry of this paper, claims 39-69 and 78-91 will be pending in this application. Of these forty-five (45) claims, four (4) claims (claims 39, 55, 78, and 85) are independent.

2. Based upon the above Amendment and following Remarks, Applicants respectfully request that all outstanding objections and rejections be reconsidered, and that they be withdrawn.

Claim Rejections under §102

3. Claims 39-41, 43-49, 55-57, 59-62 and 64 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,648,914 to Berrang *et al.* (hereinafter, "Berrang"). By the foregoing amendments, Applicants have amended independent claim 39 and 55 to incorporate the subject matter of allowable claims 74 and 76 respectively, thus putting claims 39 and 55 in condition for allowance. Reconsideration and withdrawal of these rejections is respectfully requested.

Claim Objections

4. Applicants thanks the Examiner for indicating that claims 74-77 have been objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form to include all the limitations of the base claim and any intervening claims. Applicant has cancelled claims 74-77. Applicant has amended claim 39 to include the limitations of allowable claim 74 and any intervening claims (none). Specifically, claim 39 now recites "a housing having a first surface and a second surface, wherein the first surface is opposed to the second surface..."

5. Applicants have amended claim 55 to include the limitations of allowable claim 76 and any intervening claims (none). Specifically, claim 55 now recites “and a second implant orientation in which the housing is implanted such that a second housing surface is adjacent the recipient’s skull, wherein said housing is rotated approximately 180 degrees when rotated from the first implant orientation to the second implant orientation”.

6. Applicants have added new independent claim 78 which includes the limitations of claim 39 and allowable claim 75. Specifically, new claim 78 recites “a housing having a first surface and a second surface, wherein the housing is configured to be inverted when rotated from the first implant orientation to the second implant orientation”. (See, Applicants’ claim 78, above; emphasis added.) Therefore, Applicants respectfully submit that claim 78 is now in condition for allowance.

7. Applicants have added new independent claim 85 which includes the limitations of claim 55 and allowable claim 77. Specifically, new claim 85 recites “wherein the housing position is reversed when the housing is rotated between the first implant orientation and the second implant orientation, such that said second region implanted in the cochlea remains substantially stationary during said rotation and the locations of said receiver coil relative to an ear of the recipient are different in the first and second implant orientations. (See, Applicants’ claim 85, above; emphasis added.) Therefore, Applicants respectfully submit that claim 85 is now in condition for allowance.

Dependent claims

8. The dependent claims, including new dependent claims 79-84 and 86-91 incorporate all the subject matter of their respective independent claims and add additional subject matter which makes them independently patentable over the art of record. Accordingly, Applicants respectfully assert that the dependent claims are also allowable over the art of record.

Conclusion

9. In view of the foregoing, this application should be in condition for allowance. A notice to this effect is respectfully requested.

10. Applicants reserve the right to pursue any cancelled claims or other subject matter disclosed in this application in a continuation or divisional application. Any cancellations and amendments of above claims, therefore, are not to be construed as an admission regarding the patentability of any claims and Applicants reserve the right to pursue such claims in a continuation or divisional application.

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Respectfully submitted,

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